



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-520-804]

Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) has determined that imports of certain steel nails (nails) from the United Arab Emirates are being, or are likely to be, sold in the United States at less than fair value (LFTV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the “Continuation of Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0665 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION

Case History

On November 3, 2011, the Department published in the *Federal Register* its preliminary determination in the antidumping duty investigation of nails from the United Arab Emirates. *See Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less*

Than Fair Value and Postponement of Final Determination, 76 FR 68129 (November 3, 2011) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the participating respondents, Dubai Wire FZE (Dubai Wire) and Precision Fasteners LLC (Precision). We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by both companies.¹

We received case briefs from Mid Continent Nail Corporation (hereinafter, the petitioner), Dubai Wire, and Precision on January 27, 2012. These parties submitted rebuttal comments on February 1, 2012. No hearing was requested.

Subsequent to the *Preliminary Determination*, the Department revised the SAS program to ensure that it accurately reflected the methodological choices made in that determination. These revisions to the programming, had they been included in the preliminary determination, would not have altered the weighted average dumping margins calculated there. *See* company-specific analysis memoranda, dated concurrently with this notice (company-specific analysis memoranda) (containing the revised preliminary AD margin program, output, and the weighted-average dumping margins).

Period of Investigation

The period of investigation is January 1, 2010, through December 31, 2010.

¹ *See* Memorandum to the File entitled “Verification of the Export-Price Sales Responses of Dubai Wire FZE in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,” dated January 3, 2012, Memorandum to the File entitled “Verification of the Export-Price Sales Responses of Precision Fasteners, LLC in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,” dated January 3, 2012, Memorandum to the File entitled “Verification of the Cost Response of Dubai Wire FZE in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,” dated January 17, 2012, and Memorandum to the File entitled “Verification of the Cost Response of Precision Fasteners, LLC in the Antidumping Duty Investigation of Certain Steel Nails from the United Arab Emirates,” dated January 17, 2012.

Scope of Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

- non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a

ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive;

- non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75", inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content

greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Changes to the Scope of Investigation

In the *Preliminary Determination* we stated that we are revising the scope of this investigation, as set forth in the *Initiation Notice*,² by removing the language referring to the packaging characteristics of certain nails excluded from the scope. *See Preliminary Determination*, 76 FR at 68130. Further, we also stated that we are modifying the scope of the investigation to reflect the ASTM Standard F 1667 (2011 revision) instead of the 2005 revision. *Id.* We invited interested parties to comment on these proposed changes to the scope of this investigation. We received no comments. Accordingly, for the final determination we adopted the revisions to the scope of this investigation discussed in the *Preliminary Determination*.

Adverse Facts Available

For the final determination, we continue to find that, by failing to provide information we requested, Tech Fast International Ltd. (Tech Fast), a respondent selected for individual examination in this investigation, did not act to the best of its ability. Thus, we continue to find that the use of adverse facts available (AFA) is warranted for this company under sections 776(a)(2) and (b) of the Act. *See Preliminary Determination*, 76 FR at 68130-32.

In the *Preliminary Determination*, we selected the lowest rate alleged in the petition,

² See *Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 76 FR 23559 (April 27, 2011) (*Initiation Notice*).

61.54 percent, as the AFA rate for Tech Fast.³ *See Preliminary Determination*, 76 FR at 68131.

In this final determination, however, we are relying on the average-to-transaction comparison methodology for both Dubai Wire and Precision, pursuant to section 777A(d)(1)(B) of the Act, as explained below. Therefore, we reexamined the appropriate AFA rate for Tech Fast for the final determination and corroborated such rate pursuant to section 776(c) of the Act. It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.⁴ Consistent with our practice, for the final determination we find that the highest rate in the petition of 184.41 percent is appropriate for Tech Fast. *See Initiation Notice*, 76 FR at 23563.

In the *Preliminary Determination*, we explained our rationale for finding that the rates in the petition have probative value and, thus, are both reliable and relevant to Tech Fast. *See Preliminary Determination*, 76 FR at 68131-32. Further for the final determination, we compared the normal values and net U.S. prices we calculated for Dubai Wire and Precision Fasteners in the final determination to the normal value and net U.S. price underlying the calculation of 184.41 percent rate in the petition. We found that certain normal values we calculated for Dubai Wire and Precision Fasteners in this investigation were higher than or within the range of the normal value in the petition; we found that certain net U.S. prices we calculated for Dubai Wire and Precision Fasteners in this investigation were lower than or within the range of the U.S. price in the petition. *See company-specific analysis memoranda.*

³ *See* the Petition for the Imposition of Antidumping Duties on Certain Steel Nails from the United Arab Emirates, dated March 31, 2011. *See also Initiation Notice*, 76 FR at 23653.

⁴ *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)).

Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and determining it to be relevant for the uncooperative respondent in this investigation, we have corroborated the AFA rate of 184.41 percent “to the extent practicable” as provided in section 776(c) of the Act.⁵ Therefore, with respect to Tech Fast, for the final determination we have used, as AFA, the margin in the petition of 184.41 percent, as set forth in the notice of initiation. *See Initiation Notice*, 76 FR at 23563.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

⁵ See also 19 CFR 351.308(d). See, e.g., Chapter 6 of the Department’s 2009 Antidumping Manual at 17, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from the United Kingdom*, 66 FR 40192 (August 2, 2001) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from the United Kingdom*, 67 FR 3146 (January 23, 2002)).

Targeted Dumping

Pursuant to section 777A(d)(1)(B) of the Act, the Department may employ the average-to-transaction margin-calculation methodology when: (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

In the *Preliminary Determination*, based on the methodology adopted in *Nails*,⁶ as modified in *Bags*⁷ and *Wood Flooring*⁸ to correct certain ministerial errors, for both Dubai Wire and Precision we found a pattern of export prices for comparable merchandise that differs significantly among certain customers, regions, and time periods. *See Preliminary Determination*, 76 FR at 68133. We determined preliminarily, however, that these price differences could be taken into account using the standard average-to-average methodology because the alternative average-to-transaction methodology yielded a difference in the margin that was not meaningful relative to the size of the resulting margin. *Id.* Accordingly, in the *Preliminary Determination* we applied the standard average-to-average methodology to all U.S. sales reported by Dubai Wire and Precision. *Id.*

For the final determination, for both Dubai Wire and Precision we continue to find a pattern of export prices for comparable merchandise that differs significantly among customers,

⁶ *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*).

⁷ *See Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009) (unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010)) (*Bags*).

⁸ *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 4.

regions, or by time period. *See* company-specific analysis memoranda. As a result of certain changes to the margin calculations for Dubai Wire and Precision, for the final determination we find that the standard average-to-average methodology does not take into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is significant relative to the size of the resulting margin. *See* company-specific analysis memoranda. Accordingly, for the final determination we find that the average-to-average methodology masks differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. *See* section 777A(d)(1) of the Act. Therefore, consistent with our practice, for this final determination we have applied the average-to-transaction methodology to all U.S. sales reported by Dubai Wire and Precision in this investigation.⁹

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to the margin calculations for Dubai Wire and Precision. For a discussion of these changes, *see* Memorandum to Neal Halper from Gary Urso (Dubai Wire) or from James Balog (Precision Fasteners), entitled “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination” dated concurrently with this notice (Final Determination Cost Calculation Memos) and company-specific analysis memoranda.

Affiliation and Collapsing

As explained in the *Preliminary Determination*, we found that Dubai Wire and its affiliate, Global Fasteners Limited (GFL), a producer of screws, are not a single entity pursuant to 19 CFR 351.401(f) and, thus, should not be collapsed for purposes of calculating

⁹ *See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) and accompanying Issues and Decision Memorandum at Comment 1. *See* Comment 4 of accompanying Issues and Decision Memorandum to this final determination.

a dumping margin for Dubai Wire. *See Preliminary Determination*, 76 FR at 68132. Because no party presented new arguments on the issues and we have no new information that challenges our finding in the *Preliminary Determination*, we continue to find that Dubai Wire and GFL are not a single entity. Further, as explained in the *Preliminary Determination*, we found that, pursuant to section 771(33)(F) of the Act, Precision is not affiliated with Millennium Steel and Wire LLC (MSW). For the final determination, we continue to find that Precision and MSW are not affiliated. *See* Comment 12 of accompanying Issues and Decision Memorandum to this final determination.

Cost of Production

As explained in the *Preliminary Determination*, in accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value for Dubai Wire and Precision because neither company had a viable comparison market. *See Preliminary Determination*, 76 FR at 68134-35. We calculated constructed value in accordance with section 773(e) of the Act. Because Dubai Wire and Precision did not have a viable comparison market, we determined selling expenses and profit under section 773(e)(2)(B) of the Act. In the *Preliminary Determination*, for both Dubai Wire and Precision, we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in the United Arab Emirates, Arab Heavy Industries (AHI). Based on record evidence provided since the *Preliminary Determination* and parties' comments, we find that for the final determination it is more appropriate to use a different source of information to derive the constructed value profit. *See* Comment 6 of accompanying Issues and Decision Memorandum to this final determination. Specifically, we find that the publicly available financial statements for Abu Dhabi National Company for Building Materials best meet the

requirements of section 773(e)(2)(B) of the Act because it is predominately a trading company in building materials, while AHI is predominately a provider of services and products to a customer base of marine, offshore, and engineering industries which is substantially divergent from that of Precision and Dubai Wire. Further, because this source of information did not provide enough detail to calculate selling expenses for Dubai Wire and Precision Fasteners, we used the companies' respective company-wide selling-expense rates. *See* company-specific analysis memoranda. With respect to Precision, *see also* Comment 7 of accompanying Issues and Decision Memorandum to this final determination. We find that this approach satisfies sufficiently the criteria of section 773(e) because the selling expenses were derived for subject merchandise as well as for products in the same general category as subject merchandise.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of nails from the United Arab Emirates which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) the rates for Dubai Wire, Precision, and Tech Fast will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.55 percent, as discussed in the "All-Others Rate" section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

<u>Manufacturer/Exporter</u>	<u>Weighted-Average Margin (Percent)</u>
Dubai Wire FZE	6.29
Precision Fasteners LLC	2.80
Tech Fast International Ltd.	184.41

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Dubai Wire and Precision Fasteners are the only respondents in this investigation for which we calculated a company-specific rate that is not zero or *de minimis* or determined entirely under section 776 of the Act. Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted-average calculation risks disclosure of business proprietary information of Dubai Wire and Precision Fasteners, the “all-others” rate is a simple-average of these two values, which is 4.55 percent. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value*, 75 FR 60723, 60724 (October 1, 2010).

Disclosure

We intend to disclose to parties in this proceeding the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in

accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

March 19, 2012
Date

Appendix I

Issues and Decision Memorandum

1. Targeting Dumping Allegations
2. Methodologies Underlying Targeted Dumping Test
3. *De Minimis* Standard in the Targeted Dumping Test
4. Application of the Average-to-Transaction Comparison Methodology
5. Zeroing under the Average-to-Transaction Comparison Methodology in Investigations
6. Constructed Value Profit
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